was insufficient because of the omission of this term. *Gendleman* v. *Mongillo* (Conn., 1921), 114 Atl. 914.

On its face the majority view seems merely to be in accord with the established rule that the memorandum must include all the essential terms agreed upon and that the time and manner of payment are essential terms. *Baird Inv. Co.* v. *Harris,* 209 Fed. 291; *Lester* v. *Heidt,* 86 Ga. 226, 10 L. R. A. 108; *Ebert* v. *Cullen,* 165 Mich. 75, 33 L. R. A. [n. s.] 84. It is probably true that the parties to the transaction did not themselves regard the omitted term as essential, since they did not deem it necessary to include it in a memorandum which was in other respects apparently complete, nor did defendant object to its sufficiency on this ground at the trial. But what the parties thought cannot be allowed to modify the requirements of the statute. *Wright* v. *Weeks,* 25 N. Y. 153; *Stewart* v. *Cook,* 118 Ga. 541; *Hamby* v. *Truitt,* 14 Ga. Ap. 515. On another ground, however, the correctness of the decision is not so evident. It is difficult to understand in what way the term omitted from the memorandum could be detrimental to the vendor. Presumably, it was for his benefit—*e. g.,* to save him the trouble of paying off this mortgage and then accepting one for a like amount from the vendee as part of the purchase price. In England it has been held that where the memorandum omits a term of the verbal agreement which is for the defendant's benefit the defendant cannot set up the statute if the plaintiff is willing to admit this term as part of the contract. *Martin* v. *Pycroft,* 2 D. M. & G. 785. See also *Vouillon* v. *States,* 25 L. J. (Ch.) 875, and *North* v. *Loomes* [1919], 1 Ch. 378. There appear to be no American decisions directly in accord with the English case, but even so, it is somewhat difficult to understand why the court in the principal case should have been so solicitous for the defendant's rights under the statute. Surely nothing could be further from the intent and spirit of the Statute of Frauds than putting a penalty upon the plaintiff's honesty in offering the defendant the benefit of a term which he, the defendant, would himself have been prevented from claiming by operation of the statute and the parol evidence rule. It is to be regretted if the English modification is not open to adoption by the American courts, as this decision by the Connecticut court would seem to indicate. It may be observed, however, that there is no indication in the court's opinion that these English authorities were called to its notice.

TRIAL—GENERAL EXCEPTION TO INSTRUCTIONS GIVEN TO JURY.—Where the record showed an absence of exceptions to the charge, but counsel averred that he had asked for an exception and the court sealed it for him *nunc pro tunc,* this was regarded as a general exception to the charge, but *held* that under a general exception only such matters as were basic and fundamental could be assigned as error. *Marshall* v. *Carr* (Pa., 1921), 114 Atl. 500.

This decision is in accord with previous Pennsylvania decisions on this question, and the courts of that state have declared the following to be basic and fundamental errors and assignable under a general exception: "All actual errors of law"; "material matter so inadequately presented as to be likely to mislead the jury"; "failure of whole charge to present the material

issues involved in the case." *Sikorski* v. *Philadelphia & R. Ry. Co.* (1918), 260 Pa. 243; *Mastel* v. *Walker* (1914), 246 Pa. 65. But basic and fundamental errors were not ordinarily assignable under a general exception. The courts would not look for "errors of law" within a charge, but only to the charge as a whole. "A general exception to the charge brings before the court only its propriety as a whole. And if, as a whole, it is not a misdirection, not calculated to mislead the jury, the judgment will not be reversed." THOMPSON ON TRIALS (Ed. 2), Vol. II, p. 1650. "It is well settled that if a series of propositions be embodied in instructions, and the instructions be excepted to in a mass, if any one of the propositions be correct the exception must be overruled." *Johnston* v. *Jones* (1861), 1 Black 220; *Rogers* v. *the Marshal* (1863), 1 Wall. 644. Where the appellant requested four charges and excepted generally to the court's refusal to give them, held the request was in bulk, and the exception must fail if any one charge so requested was bad. *Gains* v. *State* (1907), 149 Ala. 29. But where a special charge was requested and refused, and general exception taken to the whole charge, the request to charge was held to sufficiently call the attention of the court to the special charge, and its refusal was assignable under the general exception. *Fitzgerald* v. *Metropolitan Life Ins. Co.* (Vt., 1916), 98 Atl. 498. Where the appellant excepted generally and had asked an instruction that there was no evidence to support a verdict for plaintiff, held that the question raised by the charge whether the expense of a trip be deducted from the recovery was not assignable. *Ransom & Randolph Co.* v. *Pinches* (1916), 234 Fed. 847. The principal case seems liberal in giving the appellant the full benefit of his exception. The assignment of basic and fundamental errors under general exception is so valuable a right that where a general exception is not allowed by the court, because of the allowance of a number of special exceptions, this is held to be reversible error. *Torak* v. *Philadelphia & R. Ry. Co.* (1915), 60 Pa. Sup. Ct. 248.

WILLS—LATENT AMBIGUITY—ADMISSION OF ORAL DECLARATIONS OF TESTATOR.—The testatrix, by her will, gave the residue of her estate in the following words, "to my heirs and to be distributed to them according to law." This action was brought to secure an order of distribution to all the heirs under the terms of the will. At the trial the blood relatives of the testatrix offered to prove certain oral declarations of the testatrix, made at the time of the execution of the will, to show that the words above quoted were intended to refer only to her own kin. *Held,* that this evidence was properly excluded. *In re Watts' Estate* (Calif., 1921), 198 Pac. 1036.

This case was decided on the basis of Sections 1318 and 1340 of the California Civil Code, which provide for the explanation of latent ambiguities in wills by extrinsic evidence, but provide specifically that evidence of testator's declarations are inadmissible. But it seems likely that the holding would have been the same had there been no provision of the statute relative thereto, for it has been long established that parol evidence cannot be admitted to add to, contradict, or vary the contents of the will. See note in 17 MICH. L. REV. 178. In *Day* v. *Webler,* 93 Conn. 308, the scrivener was